

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No.: EB-FIELDWR-13-00008421
)	
Affordable Inns)	Citation No. C201332800001
)	
Wheat Ridge, CO)	

CITATION AND ORDER

Exceeding Signal Leakage Limits in Aeronautical Bands

Adopted: August 14, 2013

Released: August 15, 2013

By the District Director, Denver District Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. This is an official **CITATION AND ORDER** (Citation) issued pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended (Communications Act or Act),¹ to Affordable Inns. Specifically, Affordable Inns is being cited for failing to notify the Commission before operating a multichannel video programming distributor (MVPD) system with a carrier in the aeronautical radio frequency band, in violation of Section 76.1804 of the Commission's rules (Rules),² for exceeding cable signal leakage limits in aeronautical frequency bands in violation of Section 76.605(a)(12) of the Rules,³ and for operating two channels outside the allowable frequency tolerance in violation of Section 76.612(a)(1) of the Rules.⁴

2. Notice of Duty to Comply With Laws: Affordable Inns should take immediate steps to come into compliance and reduce excessive signal leakage, and to avoid any recurrence of the misconduct described herein. Affordable Inns also must immediately register as an MVPD and file FCC Form 321.⁵ Affordable Inns is hereby on notice that if it subsequently engages in any conduct of the type described in this Citation, including any violation of Sections 76.1804, 76.605(a)(12), and 76.612(a)(1) of the Rules, it may be subject to civil penalties, including but not limited to substantial monetary fines (forfeitures) and seizure of equipment. Such forfeitures may be based on both the conduct that led to this Citation and the conduct following it.⁶

¹ 47 U.S.C. § 503(b)(5).

² 47 C.F.R. § 76.1804.

³ 47 C.F.R. § 76.605(a)(12).

⁴ 47 C.F.R. § 76.612(a)(1).

⁵ Form 321 is an Aeronautical Frequency Notification Form, which must be submitted electronically via the Cable Operations and Licensing System Website (COALS). See <http://www.fcc.gov/forms>.

⁶ See 47 U.S.C § 503(b)(5). See also S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (If a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation was sent, the subsequent notice of apparent liability "*would attach not only for the conduct occurring subsequently but also for the conduct for which the citation was originally sent.*") (emphasis added).

3. Your Response Required: Pursuant to Sections 4(i), 4(j), and 403 of the Communications Act,⁷ we also direct Affordable Inns to respond in writing, within thirty (30) calendar days after the release date of this Citation, and signed under penalty of perjury, with descriptions of the specific action(s) taken or planned to correct the violations and preclude recurrence of the violations, and also a timeline for completion of any pending corrective action(s).

II. BACKGROUND

4. On April 26, 2013, agents from the Enforcement Bureau's Denver District Office (Denver Office) conducted an investigation and found Affordable Inns, located at 10300 S. I-70 Frontage Road, Wheat Ridge, Colorado, operated a non-cable MVPD system at its facility. The agents also found that the Affordable Inns MVPD system was using aeronautical frequencies, but had not filed an FCC Form 321 to notify the Commission of its operation in the aeronautical band. The agents further found that the Affordable Inns MVPD system was emitting a radio carrier signal above allowed limits on frequency bands utilized by aeronautical services. On April 26, 2013, the agents from the Denver Office conducted field strength measurements on the aeronautical band frequency 121.2625 MHz at a distance greater than three meters from the Affordable Inns MVPD equipment and measured an emission of 488 microvolts per meter. Additionally, the agents found that two of the channels were not properly offset from the aeronautical frequencies.

III. APPLICABLE LAW AND VIOLATIONS

5. The Rules provide that cable and non-cable MVPDs that transmit carriers with certain characteristics within frequency bands of 108-137 MHz and 225-400 MHz must comply with specific technical requirements delineated in the Rules in order to avoid interference to other licensed operations, including aeronautical systems operating in these frequency ranges. In particular, Section 76.610 of the Rules provides that all MVPDs (cable and non-cable) transmitting carriers or other signal components carried at an average power level equal to or greater than 10^{-4} watts across a 25 kHz bandwidth in any 160 microsecond period, at any point in the cable distribution system in the frequency bands 108-137 and 225-400 MHz for any purpose, must comply with, among other requirements, Sections 76.605(a)(12), 76.612, and 76.1804 of the Rules.⁸ Affordable Inns was required to comply with these Rules because the MVPD system at its property in Wheat Ridge, Colorado, transmits a carrier at an average power level equal to or greater than 10^{-4} watts across a 25 kHz bandwidth in any 160 microsecond period, and carries signals in the 108-137 MHz and 225-400 MHz aeronautical bands.

6. Section 76.605(a)(12) of the Rules provides that signal leakage from a cable television system: (1) between 54 MHz and 216 MHz shall be limited to 20 micro-volts per meter, measured at three meters and (2) less than or equal to 54 MHz and more than 216 MHz shall be limited to 15 micro-volts per meter, measured at 30 meters.⁹ At the time of the investigation, agents from the Denver Office conducted field strength measurements on the frequency 121.2625 MHz at a distance greater than three meters from the MVPD system of Affordable Inns, and measured an emission of 488 microvolts per meter which exceeds the field strength allowed on those frequencies by the Rules.

7. Section 76.612(a)(1) of the Rules provides that "[a]ll cable television systems which operate in the frequency bands 108-137 and 225-400 MHz shall comply with the following frequency separation standards: All such cable carriers or signal components shall be offset by 12.5 kHz with a

⁷ 47 U.S.C. §§ 154(i), 154(j), 403.

⁸ 47 C.F.R. § 76.610.

⁹ 47 C.F.R. § 76.605(a)(12).

frequency tolerance of ± 5 kHz.”¹⁰ At the time of the investigation, agents from the Denver Office observed Affordable Inns operating on Channel 28 (O) with a measured frequency of 247.2503 MHz (authorized is 247.2625 MHz) and on Channel 29 (P) with a measured frequency of 253.2488 MHz (authorized is 253.2625 MHz). In each instance, Affordable Inns operated the channel outside the allowable frequency tolerance.

8. Section 76.1804 of the Rules requires that an “MVPD shall notify the Commission before transmitting any carrier or other signal component with an average power level across a 25 kHz bandwidth in any 160 microsecond time period equal to or greater than 10^{-4} watts at any point in the cable distribution system on any frequency or frequencies in the aeronautical radio frequency bands (108-137 and 225-400 MHz). The notification shall be made on FCC Form 321.”¹¹ At the time of the investigation, Affordable Inns was using frequencies in the aeronautical band, but had not notified the Commission as required. Based on the foregoing evidence, we find that Affordable Inns violated Sections 76.1804, 76.605(a)(12) and 76.612(a)(1) of the Rules by failing to notify the Commission of its operations, exceeding cable signal leakage limits, and operating channels outside the allowable frequency tolerance.¹²

IV. REQUEST FOR INFORMATION

9. Pursuant to Sections 4(i), 4(j), and 403 of the Communications Act,¹³ Affordable Inns is directed to describe the steps it has taken or plans to take to come into compliance with the Commission’s cable signal leakage and notification rules, as well as a timeline for any pending corrective actions, within thirty (30) calendar days after the release date of this Citation. A failure to respond in writing, or an inadequate, incomplete, or misleading response, may subject Affordable Inns to additional sanctions.¹⁴

V. RESPONDING TO THIS CITATION

10. In addition to the required written information described in paragraphs 3 and 9, above, Affordable Inns may, if it so chooses, respond to this Citation—challenging the factual and legal findings herein—within thirty (30) calendar days from the release date of this Citation either through (1) a written statement, (2) a teleconference interview, or (3) a personal interview at the Commission Field Office nearest to your place of business.

11. If you would like to arrange a teleconference or personal interview, please contact Nikki Shears at (303) 231-5212. The nearest Commission Field Office is located in Lakewood, Colorado. Such

¹⁰ 47 C.F.R. § 76.612(a)(1).

¹¹ 47 C.F.R. § 76.1804.

¹² 47 C.F.R. §§ 76.605(a)(12), 76.612(a)(1), 76.1804.

¹³ 47 U.S.C. §§ 154(i), 154(j), 403.

¹⁴ See, e.g., *SBC Communications, Inc., Apparent Liability for Forfeiture*, Forfeiture Order, 17 FCC Rcd 7589, 7599–7600, ¶¶ 23–28 (2002) (imposing \$100,000 forfeiture for egregious and intentional misconduct, i.e., refusing to attest to truthfulness and accuracy of responses to a Letter Inquiry (LOI)); *Connect Paging, Inc. d/b/a Get A Phone*, Forfeiture Order, 22 FCC Rcd 15146 (Enf. Bur. 2007) (imposing \$4,000 forfeiture for failure to respond to an LOI); *BigZoo.Com Corporation*, Order of Forfeiture, 20 FCC Rcd 3954 (Enf. Bur. 2005) (imposing \$20,000 forfeiture for failure to respond to a USF LOI); *Donald W. Kaminski, Jr.*, Forfeiture Order, 18 FCC Rcd 26065 (Enf. Bur. 2003) (imposing \$4,000 forfeiture for failure to respond to an LOI). See also *World Communications Satellite Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 18545 (Enf. Bur. 2003) (proposing \$10,000 forfeiture for a non-responsive reply to an LOI); *Digital Antenna, Inc., Sunrise, Florida*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7600 (Enf. Bur. 2008) (proposing \$11,000 forfeiture for failure to provide complete responses to an LOI).

teleconference or interview must take place within thirty calendar (30) days of the date of this Citation. If you would like to submit a written response, including any supporting documentation, you must send the response within thirty (30) calendar days of the date of this Citation to the contact and address provided in paragraph 12, below.

12. All written communications, including the information requested in paragraphs 3 and 9, above, should be provided to the address below.

Nikki P. Shears
Federal Communications Commission
Denver District Office
215 S. Wadsworth Blvd., Suite # 303
Lakewood, CO 80226
Re: EB-FIELDWR-13-00008421

13. Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, and include as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least five (5) business days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to fcc504@fcc.gov or call the FCC's Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format):
202-418-0531 (voice), 202-418-7365 (tty).

14. Please be advised that it is a violation of Section 1.17 of the Commission's rules (47 C.F.R. § 1.17) for any person or a staff member of that person to make any false or misleading written or oral statement of fact. Specifically, no person shall:

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.¹⁵

15. Further, the knowing and willful making of any false statement, or the concealment of any material fact, in reply to this Citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

16. If you violate Section 1.17 of the Commission's rules or the criminal statute referenced above, you may be subject to further legal action, including monetary fines pursuant to Section 503 of the Communications Act.¹⁶

¹⁵ 47 C.F.R. § 1.17.

¹⁶ 47 U.S.C. § 503.

17. Under the Privacy Act of 1974, 5 U.S.C. § 552a(e)(3), we are informing you that the Commission's staff will use all relevant material information before it, including information that you disclose in your interview or written statement, to determine what, if any, enforcement action is required to ensure your compliance with the Communications Act and the Commission's rules.

VI. FUTURE VIOLATIONS

18. If, after receipt of this Citation, Affordable Inns again violates Sections 76.1804, 76.605(a)(12), and 76.612(a)(1) of the Rules by engaging in conduct of the type described herein, the Commission may impose monetary forfeitures not to exceed \$16,000 for each such violation or each day of a continuing violation, and up to \$112,500 for any single act or failure to act.¹⁷ For instance, the Commission could impose separate forfeitures for each day on which its MVPD system exceeds cable signal leakage limits. Further, as discussed above, such forfeitures may be based on both the conduct that led to the Citation and the conduct following it.¹⁸ In addition, violations of the Communications Act or the Rules also can result in seizure of equipment through *in rem* forfeiture actions,¹⁹ as well as criminal sanctions, including imprisonment.²⁰

VII. ORDERING CLAUSES

19. **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 403 of the Communications Act, Affordable Inns must provide the written information requested in paragraphs 3 and 9, above. The response to the request for information must be provided in writing, signed under penalty of perjury by an authorized official at Affordable Inns with personal knowledge of the information and representations provided in the written response, and must be received by the FCC within thirty (30) calendar days after the release date of this Citation and Order.

20. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent both by First Class U.S. Mail and Certified Mail, Return Receipt Requested, to Affordable Inns at 10300 S. I-70 Frontage Road, Wheat Ridge, CO 80033.

FEDERAL COMMUNICATIONS COMMISSION

Nikki P. Shears
District Director
Denver District Office
Western Region
Enforcement Bureau

¹⁷ See 47 U.S.C. §§ 401, 501, 503; 47 C.F.R. § 1.80(b)(7). This amount is subject to further adjustment for inflation (see 47 C.F.R. § 1.80(b)(9)), and the forfeiture amount applicable to any violation will be determined based on the statutory amount designated at the time of the violation.

¹⁸ See paragraph 2, *supra*.

¹⁹ See 47 U.S.C. § 510.

²⁰ See 47 U.S.C. §§ 401, 501.